

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TERRI LEVY and HELEN ARMGSTRONG,

Plaintiffs,

vs.

Civil No. 09-987 WLP/RLP

COSTCO WHOLESALE CORPORATION, a
foreign corporation; CLUB DEMONSTRATION
SERVICES, INC., a foreign corporation;
MIGUEL CANEZ; and JANE DOE,

Defendants.

ORDER

On June 7, 2010, this court entered its Order requiring Defendant Costco to submit a revised privilege log for materials for which it claimed protection from discovery pursuant to the work product doctrine. (Docket No. 74). Costco has submitted its revised privilege log to the court. The revised privilege log is inadequate for this court to determine the applicability of the work product. In the context of investigation of a third party insurance claim:


The fact that a defendant anticipates the contingency of litigation resulting from an accident or event does not automatically qualify an accident report as work product. If the investigation of the accident would normally be undertaken, an investigative report developed in the ordinary course of business will not be protected as work product. Following any serious accident, it can be expected that designated personnel will conduct investigations, not only out of a concern for future litigation, but also to prevent reoccurrences, to improve safety and efficiency, and to respond to regulatory obligations. Determining whether anticipated litigation is the driving force behind preparation of each requested document is the central inquiry in resolving work product questions.

Wikel v. Wal-Mart Stores, Inc., 197 F.R.D. 493, 495-496 (N.D. Okla. 2000). (citation omitted)

Defendant Costco's privilege log and revised privilege log do not address whether anticipated litigation, rather than routine claims investigation, was the driving force behind

preparation of the documents at issue.

IT IS HEREBY ORDERED that Defendant Costco shall submit the documents for which is it claiming protection from discovery pursuant to the work product doctrine to the court for in camera review within five [5] days of the date of this Order.


Richard L. Puglisi
Chief United States Magistrate Judge